

USPTO Customer No. 25280

Case 9223A

**REMARKS***Summary of Claim Amendments*

Claims 28-30 have been cancelled. Thus, Claims 22-27 and 31-46 are currently are pending in the application.

*Summary of the Office Action*

The Office Action dated June 25, 2007, included the following rejections and objections:

1. Claims 28-30 were rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claims the subject matter which Applicant regards as the invention.
2. Claims 22-46 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claims 29-56 of co-pending Application No. 11/516,881.
3. Claims 22-44 were rejected under U.S.C. 103(a) as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC.
4. Claims 45-46 were rejected under U.S.C. 103(a) as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC, and in further view of PCT Application Publication No. WO96/038298 to BURKE.

In response to these rejections, objections, and comments, and in view of the above Amendments, Applicants provide the following Remarks.

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**Discussion of the Rejections**

1. Claims 28-30 were rejected under 35 U.S.C. 112, second paragraph. Claims 28-30 have been cancelled, thereby rendering this rejection moot.
2. Claims 22-46 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claims 29-56 of co-pending Application No. 11/516,861. Applicants may be willing to submit a terminal disclaimer, once all other issues of patentability have been resolved.
3. Claims 22-44 stand rejected as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC. The Office Action states that Kerr teaches the invention, with the exception of the presence of voids in the elastomer backing. The Office Action also states that KVESIC teaches rubber mats made of ground rubber and binder having a plurality of voids, the size of which depends on factors including the size and shape of the treated rubber particles. The Office Action states that it would have been obvious to one of ordinary skill in the art to substitute the rubber material of KVESIC comprising voids for the continuous material of the elastomer backing of KERR, since KVESIC teaches the presence and size of the voids are within the level of ordinary skill in the art. Applicants respectfully traverse this conclusion.

As best understood, KVESIC teaches recycled rubber products made from ground rubber particles and polyurethane resin binders. The particles and binders are mixed together (Col. 5, lines 1-35) and then cured into the final product (Col. 6, lines 33-67). Conversely, the vulcanized thermoplastic elastomer of KERR is continuously extruded—in the form of a molten mixture of a continuous matrix of thermoplastic material with rubber particles

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throughout—onto a primary fabric having an adhesive layer. This thermoplastic elastomer mixture is extruded at a temperature of at least about 450°F (Col 4, lines 23-26).

MPEP 2143.02 states: "The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success." *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)

Applicants respectfully submit that no such reasonable expectation exists in the combination of KERR with KVESIC, which would lead to the substitution of KERR's continuous elastomer backing for KVESIC's void-containing (i.e., discontinuous) backing made from granulated rubber and a binder resin. One skilled in the art seeking to make a mat with a void-containing crumb-rubber backing would use much different processes, parameters, and materials in a mixing-and-curing system, as taught by KVESIC, as compared to the high-temperature extrusion processes, parameters, and materials, taught by KERR. Moreover, materials such as the curable polyurethane taught by KVESIC are not capable of being extruded in the process described in KERR, regardless of the size of the crumb or the amount of binder.

Thus, because there is no reasonable expectation of success in modifying the combination of references, Applicants respectfully submit that no *prima facie* case of obviousness exists. Accordingly, Applicants request the withdrawal of such rejection.

4. Claims 45-46 were rejected as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC, and in further view of PCT Application Publication No. WO96/038298 to BURKE.

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As best understood, BURKE teaches the application of edging strips to a floor mat having a rubber backing. The rubber backing is in the form of a continuous sheet. BURKE fails to teach the use of a crumb, or discontinuous, backing layer. There is no reasonable expectation of success in combining BURKE's edging strips, which are made of carboxylated rubber, with the teachings of KERR and KVESIC.

Applicants respectfully submit that the addition of BURKE does not cure the deficiencies of KERR and KVESIC.

For this reason, Applicants submit that no *prima facie* case of obviousness exists. Accordingly, Applicants respectfully request the withdrawal of such rejection.

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**OCT 25 2007** Case 9223A**CONCLUSION**

In view of the foregoing Amendments and Remarks, the Examiner is respectfully requested to withdraw the outstanding rejections and to pass the subject application to allowance. In the event that the Examiner believes that the claims would be allowable with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

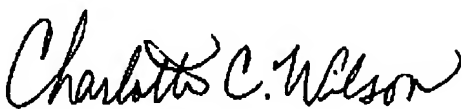
**Fee Authorization:** In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from Deposit Account No. 04-0500.

**Extension of Time:** In the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicants hereby petition for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from Deposit Account No. 04-0500.

Respectfully submitted,

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